

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KURTIS E. ARMANN,)	
)	Civil Action No. 04-118(E)
Petitioner,)	
)	
v.)	Judge Sean J. McLaughlin
)	Magistrate Judge Susan Paradise Baxter
WARDEN, FCI McKEAN,)	
)	
Respondent.)	Filed electronically

**MOTION TO STAY EVIDENTIARY HEARING
PENDING DISPOSITION OF RESPONDENT'S APPEAL
OF MAGISTRATE JUDGE'S ORDER**

AND NOW, comes Respondent, James Sherman, Warden, FCI McKean ("Respondent"), by his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Wiegand, Assistant U.S. Attorney for said district, and respectfully requests the Court to stay the Evidentiary Hearing set by Magistrate Judge Baxter's Order of March 14, 2006, pending resolution of Respondent's Appeal of that Order. As grounds for this Motion, Respondent states the following:

1. On December 29, 2005, Petitioner Kurtis Armann ("Petitioner") moved this Court to grant an evidentiary hearing on the issue of his competency to stand trial at a military court-martial which occurred over seven (7) years ago in March, 1999. In support of his Motion, Petitioner submitted over 400 pages of documentation, including Petitioner's medical records from 1998 and 1999, a declaration by an Army staff sergeant who supervised Petitioner in 1999, and a sixteen (16)-page expert report by a toxicologist who claims to have reviewed Petitioner's historical medical

records and who will opine on the effect that Petitioner's prescription medications had upon Petitioner and his ability to stand trial at his court-martial in 1999.

2. On March 14, 2006, Magistrate Judge Baxter granted Petitioner's Motion for Evidentiary Hearing, and scheduled the hearing on the matter of Petitioner's competency for May 4, 2006, at 10:00 a.m.

3. On March 28, 2006, Respondent filed and served his Notice of Appeal of the Magistrate Judge's Order granting Petitioner's Motion for Evidentiary Hearing.

4. Respondent respectfully requests that the Court issue an order staying the evidentiary hearing on Petitioner's competency pending disposition by this Court of Respondent's Appeal. Preparation for an evidentiary hearing would involve extensive review and analysis by both Respondent's counsel and his expert of all of Petitioner's supporting documentation, including Petitioner's medical records and Petitioner's expert's report. Should this Court ultimately grant the relief requested by Respondent in his Notice of Appeal and deny Petitioner's Motion for Evidentiary Hearing, a stay at this point in time will prevent Respondent from unnecessarily incurring expenses for hearing preparation.

5. Additionally, counsel for Petitioner has contacted counsel for Respondent to notify her that one of Petitioner's witnesses is unavailable for the hearing on May 4, 2006, and to confer with Respondent's counsel regarding possible alternative hearing dates to present to the Court.

WHEREFORE, Respondent respectfully requests that the Court grant this Motion, and stay the evidentiary hearing presently scheduled for May 4, 2006, pending disposition by this Court of Respondent's appeal of Magistrate Judge Baxter's Order of March 14, 2006.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Christy Wiegand
CHRISTY WIEGAND
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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served this date a copy of the within *Motion to Stay Evidentiary Hearing Pending Disposition of Appeal of Magistrate Judge's Order*, by mail or electronic filing, upon the following:

Thomas W. Patton
Federal Public Defender's Office
1001 State Street
1111 Renaissance Centre
Erie, PA 16501

s/ Christy Wiegand
CHRISTY WIEGAND
Assistant United States Attorney

Date: March 28, 2006